

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-4, 6, 9 and 10 are pending in the application, with claim 1 being the only independent claim.

Applicants believe no new matter is added by these amendments. Support for these amendments can be found in the specification as filed.

Claims 5, 7 and 8 have been cancelled.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejection under 35 U.S.C. § 112

The rejection of claim 3¹ under 35 U.S.C. § 112, second paragraph, as being indefinite because the term "derivative" allegedly lacks definition and renders the claim indefinite is respectfully traversed. (Office Action, page 2, line 10, through page 3, line 2).

One of skill in the art in the field of the present invention would have knowledge of organic chemistry and would understand what is meant by an ethylene diamine alkoxylate derivative. It is common practice to identify organic compounds in terms of a core structure. Furthermore, applicants describe ethylene diamine alkoxylate derivatives in the specification of the application and provide an adequate number of examples such that one of ordinary skill would understand what compounds constitute an ethylene

¹ We believe the examiner intended to reject claim 2.

diamine alkoxylate derivative. For example, on page 15, lines 19-20 of the specification as filed, Applicants recite ethylene diamine alkoxylate derivatives. Furthermore, claim 2, as amended, does not contain the term "derivative." This amendment has been made solely to expedite prosecution and should not be construed as acquiescence to the Office's rejection. Applicants request withdrawal of the rejection.

Rejections under 35 U.S.C. § 102(b)

Claims 1 and 9-10 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Beestman *et al.*, PCT Application No. WO 02/091,828 ("Beestman"). Office Action, page 3. Applicants respectfully traverse the rejection.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. M.P.E.P. § 2131 (August 2007). Beestman does not disclose each and every element of claims 1 and 9-10 of the present invention. Beestman teaches compositions consisting of a water-insoluble fungicide, a water-insoluble organic solvent, a water-insoluble, polar organic co-solvent, an anionic emulsifier, a free acid anionic emulsifier and a water-insoluble polymer with hydrophilic and hydrophobic groups. The Office is of the opinion that Table 1 of Beestman, at component "c)", teaches the use of γ -butyrolactone as an appropriate water-insoluble polar co-solvent. Office Action, page 4, lines 1 and 2. On the contrary, Beestman lists two examples of water-insoluble polar co-solvents in Table 1, propylene carbonate and Agsol EX8. Neither of these compounds is γ -butyrolactone. Beestman specifically describes Agsol Ex8 as N-n-octyl-2-pyrrolidone (as does the enclosed Agsol Ex 8 specification sheet). Beestman lists further examples

of water-insoluble polar co-solvents on page 6 at component c. These include "N-alkyl pyrrolidone, preferably NOP (Agsol Ex8), Propylene carbonate, Esters like Exxate (mixed alkyl acetate with C₅-C₈ alkyl, with C6 predominating), alkyl caproate." Again, none of the recited compounds is γ -butyrolactone. Therefore, Beestman does not anticipate claims 1 and 9-10. Applicants submit that claims 1 and 9-10 are novel over Beestman and request withdrawal of the rejection.

Furthermore, claims 1 and 9 as amended recite a formulation comprising, or a method of making a formulation, comprising Fluoxastrobin. Beestman does not recite a formulation or method comprising Fluoxastrobin. Accordingly, Beestman does not disclose each and every element of claims 1 and 9. Because claim 10 depends from claim 1, this claim is also not anticipated by Beestman.

The rejection of claims 1-3, 6 and 9-10 under 35 U.S.C. § 102(b) as allegedly being anticipated by Aven *et al.*, EP 1,025,757 ("Aven") (Office Action, page 4) is respectfully traversed.

Aven does not disclose each and every element of claims 1-3, 6 and 9-10 of the present invention. The Office is of the opinion that Aven discloses, at page 2 paragraph 9, a formulation containing "a stabilizing agent and/or antioxidant (claims 1 and 9, stabilizing agent of the instant invention)." Office Action, page 4, last paragraph. Applicants disagree. Claims 1 and 9 of the current application recite a formulation comprising an emulsion stabiliser or a crystallisation inhibitor, or both. Nowhere does Aven disclose an emulsion stabiliser. The only stabilizers disclosed for use in Aven are chemical stabilizers (page 8, paragraph 67). Emulsion stabilisers protect the stability of an emulsion. Crystallisation inhibitors prevent the formation of crystals. Chemical

stabilizers, however, prevent the decomposition of chemicals. Clearly, chemical stabilizers are not emulsion stabilisers or crystallisation inhibitors. Accordingly, Aven does not disclose each and every element of claim 1, and because claims 9 and 10 are dependent therefrom, these claims are also not anticipated by Aven.

The Examiner is of the further opinion that Aven discloses preferred non-ionic surfactants are alcohol alkoxylates (page 6, paragraph 47) (claim 2, ethylene diamine alkoxylate derivative, instant invention). Office Action, page 4, line 22 through page 5, line 2. The Examiner implies that the alcohol alkoxylates described in Aven are the same as the ethylene diamine alkoxylates recited in claim 2. Applicants disagree. Ethylene diamine alkoxylate derivatives are not the same as alcohol alkoxylates. Accordingly, Aven does not disclose each and every element of claim 2.

The Examiner further asserts Aven discloses that Synperonic® alcohol ethoxylates from Uniqema are particularly preferred (page 6, paragraph 48) (claim 3, Synperonic®, instant invention). Office Action, page 5, lines 2-4. Applicants disagree. Although Synperonic® 91-6, disclosed by Aven, and Synperonic® T/304, disclosed in the current application, share similar names, they are not the same. Synperonic® 91-6, disclosed by Aven, is a mixture of alcohol ethoxylates. In contrast, Synperonic® T/304, as disclosed in claim 3 of the current application, is a mixture of ethylene diamine alkoxylate derivatives. As mentioned above, ethylene diamine alkoxylate derivatives are not the same as alcohol alkoxylates. Accordingly, Aven does not disclose each and every element of claim 3.

Furthermore, claim 1 as amended recites a formulation comprising Fluoxastrobin. Claim 3 is dependent on claim 1. Aven does not recite a formulation comprising at least

one agrochemical active ingredient which is Fluoxastrobin. Accordingly, Aven does not disclose each and every element of claim 3.

Applicants request withdrawal of the rejections.

Rejections under 35 U.S.C. § 103(a)

Claims 1-10 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Aven in view of Wachendorff-Neumann *et al.*, PCT Application No. WO 2004/000022, published December 31, 2003 ("Wachendorff-Neumann"). Office Action, page 3. Applicants respectfully traverse the rejection.

It is respectfully asserted that Wachendorff-Neumann is not prior art. The publication date of Wachendorff-Neumann is December 31, 2003, whereas the current application claims the benefit of priority to German Foreign Application No 10329714.6 filed on July 2, 2003. Office Action, page 2, lines 6 and 7. Accordingly, Wachendorff-Neumann is not prior art and it is respectfully requested that the rejection be withdrawn.

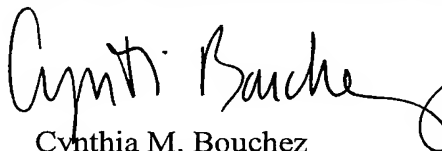
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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